

**BEFORE THE  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

**In the Matter of:**

**JEFFREY S. SALMON dba ELITE  
TRANSPORTATION,**

**Respondent.**

**Docket No. FMCSA-2009-0134<sup>1</sup>  
(Southern Service Center)**

**ORDER APPOINTING ADMINISTRATIVE LAW JUDGE**

**1. Background**

On February 24, 2009, the North Carolina Division Administrator, Federal Motor Carrier Safety Administration (FMCSA), issued a Notice of Claim to Respondent, Jeffrey S. Salmon dba Elite Transportation, proposing a civil penalty of \$2,740 for one alleged violation of 49 CFR 382.305(b)(2), for failing to conduct random controlled substances testing at an annual rate of not less than the applicable annual rate of the average number of driver positions.<sup>2</sup>

On March 9, 2009, Respondent replied to the Notice of Claim, denying the violation and seeking binding arbitration. Respondent contended that the safety investigator provided it with incorrect information concerning the testing cycles; it also argued that included in the number of driver positions were people who were operating for other companies.<sup>3</sup>

On May 20, 2009, Claimant, the Field Administrator for the Southern Service

---

<sup>1</sup> The prior case number of this matter was NC-2008-0096-US0301.

<sup>2</sup> See Government Exhibit A to Field Administrator's Consent to Hearing. The Statement of Charges portion of the Notice of Claim was not included with the exhibit.

<sup>3</sup> See Government Exhibit B to Field Administrator's Consent to Hearing.

Center, FMCSA, pointed out that binding arbitration is available only to a respondent that admits having violated the regulations. Because Respondent denied the alleged violation, Claimant maintained that binding arbitration was not available to Respondent.

Nevertheless, Claimant believed the reply was, in essence, a request for a hearing, to which Claimant consented.

## **2. Discussion**

Claimant is correct that because Respondent denied the violation, binding arbitration is not available to it.<sup>4</sup> Claimant is also correct that a hearing should be held to resolve the issues in this matter. Therefore, pursuant to 49 CFR 386.16(b)(4)(C), the matter is referred to the U.S. Department of Transportation's Office of Hearings.<sup>5</sup>

## **3. Appointment of Administrative Law Judge**

In accordance with 49 CFR 386.54, an administrative law judge is hereby appointed, to be designated by the Chief Administrative Law Judge of the Department of Transportation, to preside over this matter and render a decision on all issues, including the civil penalty, if any, to be imposed. The proceeding shall be governed by subparts D and E of 49 CFR Part 386 of the Rules of Practice and all orders issued by the

---

<sup>4</sup> See *Guidance for the Use of Binding Arbitration under the Administrative Dispute Resolution Act of 1996*, Docket No. FMCSA-2003-14794, 69 Fed. Reg. 10288, March 4, 2004.

<sup>5</sup> Two other matters involving carriers with different DOT numbers but located at the same address as Respondent are also being referred to hearing this day: *In the Matter of Elite Freight Systems, Inc.*, Docket No. FMCSA-2009-0132, and *In the Matter of Jefferson P. Salmon dba Elite Freight Systems*, Docket No. FMCSA-2009-0135. The decision on whether these cases should be consolidated will be made by the Office of Hearings. (Note that although the Notice of Claim in Docket No. FMCSA-2009-0135 was sent to a different address than the Notices of Claim in the other two cases, the Agency's Safety and Fitness Electronic Records System (<http://www.saferys.org/>) lists the same address and telephone number for all three carriers.)

administrative law judge.

*It Is So Ordered.*



Rose A. McMurray  
Assistant Administrator  
Federal Motor Carrier Safety Administration

5-27-09

Date

**CERTIFICATE OF SERVICE**

This is to certify that on this 21 day of May, 2009, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

Jeffrey S. Salmon dba Elite Transportation  
10601 Ponderosa Service Road  
Wake Forest, NC 27587  
(919) 562-1824 (phone)

One Copy  
U.S. Mail

Deborah Stanziano, Esq.  
Trial Attorney  
Office of Chief Counsel (MC-CCE)  
Federal Motor Carrier Safety Administration  
1800 Century Blvd., Suite 1700  
Atlanta, GA 30345  
(404) 327-7375 (phone)  
(404) 327-7359 (fax)

One Copy  
U.S. Mail

Darrell L. Ruban, Field Administrator  
Southern Service Center  
Federal Motor Carrier Safety Administration  
1800 Century Boulevard, Suite 1700  
Atlanta, GA 30345

One Copy  
U.S. Mail

Chris M. Hartley  
North Carolina Division Administrator  
Federal Motor Carrier Safety Administration  
310 New Bern Avenue, Suite 468  
Raleigh, NC 27601

One Copy  
U.S. Mail

The Honorable Ronnie A. Yoder  
Chief Administrative Law Judge  
Office of Hearings, M-20  
U.S. Department of Transportation  
1200 New Jersey Avenue, S.E.  
East Building Ground Floor  
Room E12-320  
Washington, D.C. 20590

One Copy  
Personal Delivery

FMCSA-2009-0134

U.S. Department of Transportation  
Docket Operations, M-30  
West Building Ground Floor  
Room W12-140  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590

Original  
Personal Delivery

Jennie Miller